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Jurors in CBS Case Get Preview of Summations

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The jury in Gen. William C. Westmoreland's libel trial against CBS in Federal District Court in Manhattan was given an unexpected preview yesterday of summations likely to be delivered by both sides in a month.

Dan M. Burt, General Westmoreland's lawyer, told the jury that the controversy over enemy strength in South Vietnam in 1967 — the focus of the CBS documentary over which the general sued — had "all the earmarks of a very bitter dispute but not evidence of any conspiracy to deceive."

All of you, he told the jurors, have had "violent disagreements with a spouse or a boss" over how the same set of facts should be interpreted. "It doesn't mean you were dishonest. You can have that kind of disagreement over which football team is going to win the Super Bowl."

General Westmoreland's command, Mr. Burt said, had made no effort to hide figures on the North Vietnamese and Vietcong enemy: "Everybody had the same raw data. Now, one of the things that people trying to engage in deception do not do is give the people they are trying to deceive the evidence that shows a deception in progress."

David Boies, the lawyer for CBS, countered: "This is not an honest disagreement." The actions by the military, he said, were "properly characterized" on the 1982 broadcast "as a conspiracy. This is not a situation in which you look at two different pieces of evidence and you come up with different bets on who's going to win the Super Bowl."

"This is a situation," he said, "in which, instead of bringing intelligence from the bottom up, instead of intelligence officers doing what they are supposed to do, to find out what the facts are, you had a command position from the top down saying, 'No, we don't want to hear that. We don't want to hear anything that tells the policy-makers that we're not winning this war.'"

Interim Summations Allowed

The remarks by each lawyer were made as "interim summations" permitted by Judge Pierre N. Leval on a limited basis since the trial began in October. The last interim summations were delivered Jan. 8, when Mr. Burt rested his case.

Mr. Burt initiated the exchange yesterday, telling the jury that "you've all been here a long time and I think it's possibly helpful for us to summarize."

The CBS documentary, "The Uncounted Enemy: A Vietnam Deception," accused General Westmoreland's command of "conspiring" to understate enemy strength in the year before the Tet offensive of January 1968. General Westmoreland led American forces in Vietnam from 1964 to 1968.

According to the broadcast, General Westmoreland imposed an "arbitrary ceiling" of 300,000 on reports of enemy strength, mainly by removing the Vietcong's self-defense troops from the official listing of enemy forces and by refusing to allow inclusion of a current figure in a special intelligence estimate for President Lyndon B. Johnson and his aides in November 1967.

The program also said the command "systematically blocked" reports from its officers of an infiltration rate of 20,000 to 25,000 a month in the fall of 1967 — quadruple the rate made known.

General Westmoreland — who contends that the documentary defamed him by saying he had lied to his superiors — has denied that he acted for other than proper reasons.

Yesterday, Joseph C. Stumpf, a former Central Intelligence Agency analyst, testified for CBS that his estimate of the Vietcong's "administrative services," or support, troops in April 1968 was 75,000 to 100,000 — more than twice the 35,000 to 40,000 figure successfully advanced by the military command.

Mr. Stumpf recalled visiting Vietnam in the weeks before the Tet offensive and being told by some military analysts that their own relatively high figures "were being arbitrarily reduced" by senior officers. The analysts, according to Mr. Stumpf, "were simply told that it was a command decision ... made up the line."

The command's "contrived numbers, geared to show we were winning the war," Mr. Stumpf said, became "increasingly dishonest" and, after the Tet offensive, "intolerable."

On cross-examination, Mr. Stumpf conceded that his superiors in the C.I.A. had reduced his estimate of support troops to 60,000 to 80,000, for methodological reasons and because some of those troops might have been outside South Vietnam. Mr. Stumpf also acknowledged that at least one senior military intelligence officer thought his estimate was "based on a thin reed."

In other testimony, Greg Rushford, an investigator for the House Select Committee on Intelligence in 1975, also said the military's figures for enemy strength in 1967 were "dishonest." The military, Mr. Rushford said, had "acted like used car salesmen rolling the mileage back."

Mr. Rushford said that General Westmoreland was responsible for creating "the tone, the atmosphere" that permitted such distortion.

No Interview with the General

On cross-examination, Mr. Rushford said he had spoken to only four military officers during his work for the committee on the Tet offensive and had "not had the opportunity" then to interview General Westmoreland. He said he did not know "which of the higher-ups" knew the military command was being untruthful.

In a deposition read into the record late Wednesday, Bernard A. Gattozzi, a former military analyst in Saigon, said that the officially reported monthly infiltration of approximately 5,500 in the fall of 1967 was "a joke."

Mr. Gattozzi, an Army lieutenant in 1967, said he had attempted to argue for "confirmed" infiltration of 15,000 to 20,000 a month, but had been rebuffed by senior officers. Mr. Gattozzi said that while he regularly made use of infiltration estimates, he was not involved in their compilation.

In his interim summation yesterday, Mr. Boies mentioned several CBS witnesses, including C.I.A. analysts and military officers, who have portrayed the role of General Westmoreland's command in 1967 as a "conspiracy." Their views, he said, were the basis for the documentary.

"The words they used," Mr. Boies told the jury, "were not the words of 'honest disagreement.' You heard the words. They were 'dishonesty, suppression, guilt' — words that talked about putting forward estimates for which there was no evidence."

Mr. Boies also reminded the jury that, to prevail in his suit, General Westmoreland had to prove that the broadcast defamed him personally, not merely that it related to his command.

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Mr. Burt responded that, by his count, the documentary mentioned General Westmoreland more than 40 times, "and it sure didn't wander in there by accident."

Mr. Burt noted that, even though the estimate for President Johnson did not include a 1967 figure for the self-defense forces, it contained a 1966 estimate and described the forces.

The issue in the suit, Mr. Burt stressed, was whether General Westmoreland had sought to deceive his superiors. And CBS, he said, had had "plenty of time to check and determine" that question.

"It's just like you take a gun," Mr. Burt said, "and you put bullets in the chamber of that gun and you level it at a person."